

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 21-11457-GAO

SHIRLEY A. GOODE and SEAN GOODE,
Plaintiffs,

v.

DANIEL SMITH and CITY OF BOSTON,
Defendants.

ORDER
March 21, 2023

O'TOOLE, D.J.

The plaintiffs Shirley and Sean Goode have asserted three claims against Boston Police Officer Daniel Smith: unlawful search and seizure under 42 U.S.C. § 1983, unlawful killing of a dog under Massachusetts General Laws Chapter 272 § 85A, and intentional infliction of emotional distress. Officer Smith has moved to dismiss the claims asserted against him. For the reasons below, his motion is denied.

Officer Smith argues that the doctrines of qualified and common law immunity bar the Goodes' statutory claims against him. The former shields government officials from civil liability if "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Pearson v. Callahan, 555 U.S. 223, 231 (2009) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). The latter protects government officials "act[ing] in good faith, without malice and without corruption." Nelson v. Salem State Coll., 845 N.E.2d 338, 348 (Mass. 2006). The Complaint alleges that Officer Smith's shooting of the plaintiffs' dog was "objectively unreasonable" and amounted to a "seizure under the Fourth Amendment."

(Compl. ¶¶ 26–27 (dkt. no. 1-1).) Fairly read, the Complaint alleges an intentional, not negligent, act by Officer Smith in violation of the identified statutes.

Officer Smith also argues that the Goodes’ intentional infliction of emotional distress claim fails because his conduct was not extreme and outrageous as a matter of law. But the Goodes have “alleged facts and circumstances which reasonably could lead the trier of fact to conclude that defendant’s conduct was extreme and outrageous, having a severe and traumatic effect upon plaintiff’s emotional tranquility.” See Agis v. Howard Johnson Co., 355 N.E.2d 315, 319 (Mass. 1976).

Officer Smith’s Motion to Dismiss (dkt. no. 12) is therefore DENIED.

It is SO ORDERED.

/s/ George A. O’Toole, Jr.
United States District Judge